



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB2253

Introduced 1/27/2016, by Sen. Pamela J. Althoff

#### SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/11a	from Ch. 48, par. 39s-11a

Amends the Prevailing Wage Act. Defines "compensatory damages" and "actual damages" as the sum of economic and non-economic damages. Provides that any individual, contractor, or subcontractor who has been aggrieved by a filed false complaint may institute a civil action for damages, including, but not limited to, compensatory damages, legal fees, administrative fees, penalties assessed by the Department of Labor pursuant to the complaint, injunctive relief, and other appropriate equitable relief. Provides that no public body, including a home rule unit, is authorized to use as a basis for denying a contract to a contractor or subcontractor any complaint filed with the Department or any determination by the Department that the contractor or subcontractor has committed a violation under this Act, unless the contractor or subcontractor is debarred at the time of the bid. Effective immediately.

LRB099 16010 KTG 40327 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Prevailing Wage Act is amended by changing  
5 Sections 2, 4, and 11a as follows:

6 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

7 Sec. 2. This Act applies to the wages of laborers,  
8 mechanics and other workers employed in any public works, as  
9 hereinafter defined, by any public body and to anyone under  
10 contracts for public works. This includes any maintenance,  
11 repair, assembly, or disassembly work performed on equipment  
12 whether owned, leased, or rented.

13 As used in this Act, unless the context indicates  
14 otherwise:

15 "Public works" means all fixed works constructed or  
16 demolished by any public body, or paid for wholly or in part  
17 out of public funds. "Public works" as defined herein includes  
18 all projects financed in whole or in part with bonds, grants,  
19 loans, or other funds made available by or through the State or  
20 any of its political subdivisions, including but not limited  
21 to: bonds issued under the Industrial Project Revenue Bond Act  
22 (Article 11, Division 74 of the Illinois Municipal Code), the  
23 Industrial Building Revenue Bond Act, the Illinois Finance

1 Authority Act, the Illinois Sports Facilities Authority Act, or  
2 the Build Illinois Bond Act; loans or other funds made  
3 available pursuant to the Build Illinois Act; loans or other  
4 funds made available pursuant to the Riverfront Development  
5 Fund under Section 10-15 of the River Edge Redevelopment Zone  
6 Act; or funds from the Fund for Illinois' Future under Section  
7 6z-47 of the State Finance Act, funds for school construction  
8 under Section 5 of the General Obligation Bond Act, funds  
9 authorized under Section 3 of the School Construction Bond Act,  
10 funds for school infrastructure under Section 6z-45 of the  
11 State Finance Act, and funds for transportation purposes under  
12 Section 4 of the General Obligation Bond Act. "Public works"  
13 also includes (i) all projects financed in whole or in part  
14 with funds from the Department of Commerce and Economic  
15 Opportunity under the Illinois Renewable Fuels Development  
16 Program Act for which there is no project labor agreement; (ii)  
17 all work performed pursuant to a public private agreement under  
18 the Public Private Agreements for the Illiana Expressway Act or  
19 the Public-Private Agreements for the South Suburban Airport  
20 Act; and (iii) all projects undertaken under a public-private  
21 agreement under the Public-Private Partnerships for  
22 Transportation Act. "Public works" also includes all projects  
23 at leased facility property used for airport purposes under  
24 Section 35 of the Local Government Facility Lease Act. "Public  
25 works" also includes the construction of a new wind power  
26 facility by a business designated as a High Impact Business

1 under Section 5.5(a) (3) (E) of the Illinois Enterprise Zone Act.  
2 "Public works" does not include work done directly by any  
3 public utility company, whether or not done under public  
4 supervision or direction, or paid for wholly or in part out of  
5 public funds. "Public works" also includes any corrective  
6 action performed pursuant to Title XVI of the Environmental  
7 Protection Act for which payment from the Underground Storage  
8 Tank Fund is requested. "Public works" does not include  
9 projects undertaken by the owner at an owner-occupied  
10 single-family residence or at an owner-occupied unit of a  
11 multi-family residence. "Public works" does not include work  
12 performed for soil and water conservation purposes on  
13 agricultural lands, whether or not done under public  
14 supervision or paid for wholly or in part out of public funds,  
15 done directly by an owner or person who has legal control of  
16 those lands.

17 "Compensatory damages" or "actual damages" are the sum of  
18 economic and non-economic damages.

19 "Construction" means all work on public works involving  
20 laborers, workers or mechanics. This includes any maintenance,  
21 repair, assembly, or disassembly work performed on equipment  
22 whether owned, leased, or rented.

23 "Locality" means the county where the physical work upon  
24 public works is performed, except (1) that if there is not  
25 available in the county a sufficient number of competent  
26 skilled laborers, workers and mechanics to construct the public

1 works efficiently and properly, "locality" includes any other  
2 county nearest the one in which the work or construction is to  
3 be performed and from which such persons may be obtained in  
4 sufficient numbers to perform the work and (2) that, with  
5 respect to contracts for highway work with the Department of  
6 Transportation of this State, "locality" may at the discretion  
7 of the Secretary of the Department of Transportation be  
8 construed to include two or more adjacent counties from which  
9 workers may be accessible for work on such construction.

10 "Public body" means the State or any officer, board or  
11 commission of the State or any political subdivision or  
12 department thereof, or any institution supported in whole or in  
13 part by public funds, and includes every county, city, town,  
14 village, township, school district, irrigation, utility,  
15 reclamation improvement or other district and every other  
16 political subdivision, district or municipality of the state  
17 whether such political subdivision, municipality or district  
18 operates under a special charter or not.

19 The terms "general prevailing rate of hourly wages",  
20 "general prevailing rate of wages" or "prevailing rate of  
21 wages" when used in this Act mean the hourly cash wages plus  
22 annualized fringe benefits for training and apprenticeship  
23 programs approved by the U.S. Department of Labor, Bureau of  
24 Apprenticeship and Training, health and welfare, insurance,  
25 vacations and pensions paid generally, in the locality in which  
26 the work is being performed, to employees engaged in work of a

1 similar character on public works.

2 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;  
3 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.  
4 7-16-14.)

5 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

6 Sec. 4. Ascertaining prevailing wage.

7 (a) The public body awarding any contract for public work  
8 or otherwise undertaking any public works, shall ascertain the  
9 general prevailing rate of hourly wages in the locality in  
10 which the work is to be performed, for each craft or type of  
11 worker or mechanic needed to execute the contract, and where  
12 the public body performs the work without letting a contract  
13 therefor, shall ascertain the prevailing rate of wages on a per  
14 hour basis in the locality, and such public body shall specify  
15 in the resolution or ordinance and in the call for bids for the  
16 contract, that the general prevailing rate of wages in the  
17 locality for each craft or type of worker or mechanic needed to  
18 execute the contract or perform such work, also the general  
19 prevailing rate for legal holiday and overtime work, as  
20 ascertained by the public body or by the Department of Labor  
21 shall be paid for each craft or type of worker needed to  
22 execute the contract or to perform such work, and it shall be  
23 mandatory upon the contractor to whom the contract is awarded  
24 and upon any subcontractor under him, and where the public body  
25 performs the work, upon the public body, to pay not less than

1 the specified rates to all laborers, workers and mechanics  
2 employed by them in the execution of the contract or such work;  
3 provided, however, that if the public body desires that the  
4 Department of Labor ascertain the prevailing rate of wages, it  
5 shall notify the Department of Labor to ascertain the general  
6 prevailing rate of hourly wages for work under contract, or for  
7 work performed by a public body without letting a contract as  
8 required in the locality in which the work is to be performed,  
9 for each craft or type of worker or mechanic needed to execute  
10 the contract or project or work to be performed. Upon such  
11 notification the Department of Labor shall ascertain such  
12 general prevailing rate of wages, and certify the prevailing  
13 wage to such public body.

14 (a-1) The public body or other entity awarding the contract  
15 shall cause to be inserted in the project specifications and  
16 the contract a stipulation to the effect that not less than the  
17 prevailing rate of wages as found by the public body or  
18 Department of Labor or determined by the court on review shall  
19 be paid to all laborers, workers and mechanics performing work  
20 under the contract.

21 (a-2) When a public body or other entity covered by this  
22 Act has awarded work to a contractor without a public bid,  
23 contract or project specification, such public body or other  
24 entity shall comply with subsection (a-1) by providing the  
25 contractor with written notice on the purchase order related to  
26 the work to be done or on a separate document indicating that

1 not less than the prevailing rate of wages as found by the  
2 public body or Department of Labor or determined by the court  
3 on review shall be paid to all laborers, workers, and mechanics  
4 performing work on the project.

5 (a-3) Where a complaint is made and the Department of Labor  
6 determines that a violation occurred, the Department of Labor  
7 shall determine if proper written notice under this Section 4  
8 was given. If proper written notice was not provided to the  
9 contractor by the public body or other entity, the Department  
10 of Labor shall order the public body or other entity to pay any  
11 interest, penalties or fines that would have been owed by the  
12 contractor if proper written notice were provided. The failure  
13 by a public body or other entity to provide written notice does  
14 not relieve the contractor of the duty to comply with the  
15 prevailing wage rate, nor of the obligation to pay any back  
16 wages, as determined under this Act. For the purposes of this  
17 subsection, back wages shall be limited to the difference  
18 between the actual amount paid and the prevailing rate of wages  
19 required to be paid for the project. The failure of a public  
20 body or other entity to provide written notice under this  
21 Section 4 does not diminish the right of a laborer, worker, or  
22 mechanic to the prevailing rate of wages as determined under  
23 this Act.

24 (a-4) Any individual, contractor, or subcontractor who has  
25 been aggrieved by a filed false complaint may institute a civil  
26 action for damages, including, but not limited to, compensatory

1 damages, legal fees, administrative fees, penalties assessed  
2 by the Department of Labor pursuant to the complaint,  
3 injunctive relief, and other appropriate equitable relief. Any  
4 person found to knowingly file a false complaint shall be  
5 liable to the individual, contractor, or subcontractor who was  
6 falsely accused for damages as provided in this subsection.

7 (b) It shall also be mandatory upon the contractor to whom  
8 the contract is awarded to insert into each subcontract and  
9 into the project specifications for each subcontract a written  
10 stipulation to the effect that not less than the prevailing  
11 rate of wages shall be paid to all laborers, workers, and  
12 mechanics performing work under the contract. It shall also be  
13 mandatory upon each subcontractor to cause to be inserted into  
14 each lower tiered subcontract and into the project  
15 specifications for each lower tiered subcontract a stipulation  
16 to the effect that not less than the prevailing rate of wages  
17 shall be paid to all laborers, workers, and mechanics  
18 performing work under the contract. A contractor or  
19 subcontractor who fails to comply with this subsection (b) is  
20 in violation of this Act.

21 (b-1) When a contractor has awarded work to a subcontractor  
22 without a contract or contract specification, the contractor  
23 shall comply with subsection (b) by providing a subcontractor  
24 with a written statement indicating that not less than the  
25 prevailing rate of wages shall be paid to all laborers,  
26 workers, and mechanics performing work on the project. A

1 contractor or subcontractor who fails to comply with this  
2 subsection (b-1) is in violation of this Act.

3 (b-2) Where a complaint is made and the Department of Labor  
4 determines that a violation has occurred, the Department of  
5 Labor shall determine if proper written notice under this  
6 Section 4 was given. If proper written notice was not provided  
7 to the subcontractor by the contractor, the Department of Labor  
8 shall order the contractor to pay any interest, penalties, or  
9 fines that would have been owed by the subcontractor if proper  
10 written notice were provided. The failure by a contractor to  
11 provide written notice to a subcontractor does not relieve the  
12 subcontractor of the duty to comply with the prevailing wage  
13 rate, nor of the obligation to pay any back wages, as  
14 determined under this Act. For the purposes of this subsection,  
15 back wages shall be limited to the difference between the  
16 actual amount paid and the prevailing rate of wages required  
17 for the project. However, if proper written notice was not  
18 provided to the contractor by the public body or other entity  
19 under this Section 4, the Department of Labor shall order the  
20 public body or other entity to pay any interest, penalties, or  
21 fines that would have been owed by the subcontractor if proper  
22 written notice were provided. The failure by a public body or  
23 other entity to provide written notice does not relieve the  
24 subcontractor of the duty to comply with the prevailing wage  
25 rate, nor of the obligation to pay any back wages, as  
26 determined under this Act. For the purposes of this subsection,

1 back wages shall be limited to the difference between the  
2 actual amount paid and the prevailing rate of wages required  
3 for the project. The failure to provide written notice by a  
4 public body, other entity, or contractor does not diminish the  
5 right of a laborer, worker, or mechanic to the prevailing rate  
6 of wages as determined under this Act.

7 (c) A public body or other entity shall also require in all  
8 contractor's and subcontractor's bonds that the contractor or  
9 subcontractor include such provision as will guarantee the  
10 faithful performance of such prevailing wage clause as provided  
11 by contract or other written instrument. All bid specifications  
12 shall list the specified rates to all laborers, workers and  
13 mechanics in the locality for each craft or type of worker or  
14 mechanic needed to execute the contract.

15 (d) If the Department of Labor revises the prevailing rate  
16 of hourly wages to be paid by the public body or other entity,  
17 the revised rate shall apply to such contract, and the public  
18 body or other entity shall be responsible to notify the  
19 contractor and each subcontractor, of the revised rate.

20 The public body or other entity shall discharge its duty to  
21 notify of the revised rates by inserting a written stipulation  
22 in all contracts or other written instruments that states the  
23 prevailing rate of wages are revised by the Department of Labor  
24 and are available on the Department's official website. This  
25 shall be deemed to be proper notification of any rate changes  
26 under this subsection.

1           (e) Two or more investigatory hearings under this Section  
2 on the issue of establishing a new prevailing wage  
3 classification for a particular craft or type of worker shall  
4 be consolidated in a single hearing before the Department. Such  
5 consolidation shall occur whether each separate investigatory  
6 hearing is conducted by a public body or the Department. The  
7 party requesting a consolidated investigatory hearing shall  
8 have the burden of establishing that there is no existing  
9 prevailing wage classification for the particular craft or type  
10 of worker in any of the localities under consideration.

11           (f) It shall be mandatory upon the contractor or  
12 construction manager to whom a contract for public works is  
13 awarded to post, at a location on the project site of the  
14 public works that is easily accessible to the workers engaged  
15 on the project, the prevailing wage rates for each craft or  
16 type of worker or mechanic needed to execute the contract or  
17 project or work to be performed. In lieu of posting on the  
18 project site of the public works, a contractor which has a  
19 business location where laborers, workers, and mechanics  
20 regularly visit may: (1) post in a conspicuous location at that  
21 business the current prevailing wage rates for each county in  
22 which the contractor is performing work; or (2) provide such  
23 laborer, worker, or mechanic engaged on the public works  
24 project a written notice indicating the prevailing wage rates  
25 for the public works project. A failure to post or provide a  
26 prevailing wage rate as required by this Section is a violation

1 of this Act.

2 (Source: P.A. 96-437, eff. 1-1-10; 97-964, eff. 1-1-13.)

3 (820 ILCS 130/11a) (from Ch. 48, par. 39s-11a)

4 Sec. 11a. The Director of the Department of Labor shall  
5 publish in the Illinois Register no less often than once each  
6 calendar quarter a list of contractors or subcontractors found  
7 to have disregarded their obligations to employees under this  
8 Act. The Department of Labor shall determine the contractors or  
9 subcontractors who, on 2 separate occasions within 5 years,  
10 have been determined to have violated the provisions of this  
11 Act. Upon such determination the Department shall notify the  
12 violating contractor or subcontractor. Such contractor or  
13 subcontractor shall then have 10 working days to request a  
14 hearing by the Department on the alleged violations. Failure to  
15 respond within the 10 working day period shall result in  
16 automatic and immediate placement and publication on the list.  
17 If the contractor or subcontractor requests a hearing within  
18 the 10 working day period, the Director shall set a hearing on  
19 the alleged violations. Such hearing shall take place no later  
20 than 45 calendar days after the receipt by the Department of  
21 Labor of the request for a hearing. The Department of Labor is  
22 empowered to promulgate, adopt, amend and rescind rules and  
23 regulations to govern the hearing procedure. No contract shall  
24 be awarded to a contractor or subcontractor appearing on the  
25 list, or to any firm, corporation, partnership or association

1 in which such contractor or subcontractor has an interest until  
2 4 years have elapsed from the date of publication of the list  
3 containing the name of such contractor or subcontractor. A  
4 public body, including a home rule unit, may not use as a basis  
5 for denying a contract to a contractor or subcontractor any  
6 complaint filed with the Department or any determination by the  
7 Department that the contractor or subcontractor has committed a  
8 violation under this Act, unless the contractor or  
9 subcontractor is debarred at the time of the bid as provided  
10 under this Section. This subsection is a limitation under  
11 subsection (i) of Section 6 of Article VII of the Illinois  
12 Constitution on the concurrent exercise by home rule units of  
13 powers and functions exercised by the State.

14 A contractor or subcontractor convicted or found guilty  
15 under Section 5 or 6 of this Act shall be subject to an  
16 automatic and immediate debarment, thereafter prohibited from  
17 participating in any public works project for 4 years, with no  
18 right to a hearing.

19 (Source: P.A. 97-571, eff. 1-1-12.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.